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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

MAR 30 1993

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

MM DOCKET NO. 93-4

In re Applications of

ATKINS BROADCASTING

et al.

For Renewal of Licenses

File No. BRH-900327UP

To: Administrative Law Judge Joseph Chachkin

PETITION FOR STAY OF PROCEEDING
TO IMPLEMENT DISTRESS SALE

Atkins Broadcasting, Caprock Educational Broadcasting Foundation, Southwest Educational Media Foundation of Texas, Inc., and Southwest Educational Media Foundation (herein "Atkins"), applicants in the above-captioned proceeding, by their counsel, hereby submit this petition for stay of proceeding to implement a distress sale. In support whereof, the following is stated:

1. Atkins recently signed an agreement with a minority-controlled group whereby Atkins will assign all licenses and/or permits to a non-profit corporation pursuant to the Commission's minority distress sale policy. (See Attachment hereto). Under Commission policy, such a transfer would moot the designated issues in the hearing designation order and would terminate this proceeding. *Minority Ownership of Broadcast Facilities*, 42 RR 2d 1689 (1978); *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978); *Grayson Enterprises, Inc.*, 47 RR 2d 287 (1980).

2. The proposed sale herein meets the threshold criteria for relief by distress sale. First, the hearing has not yet commenced. Second, the proposed assignee is 100% minority controlled (all of the principals are Hispanic). Finally, the par-

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ties have agreed to limit the purchase price to 75% of the fair market value of the stations - to be determined in accordance with Commission policies.

3. The instant proposal also meets the following public interest objectives. The distress sale will conserve Commission resources since there will be no need for a hearing on the designated issues. It is clear from the HDO that the issues designated are both numerous and complex. The litigation involved would be extensive if the issues had to be tried. Thus, the distress sale clearly meets the objective of conserving Commission resources.

4. Secondly, the distress sale will permit the stations to be put in the hands of a qualified licensee expeditiously. The stations are currently under a cloud as a result of the instant proceeding. This is particularly important since these stations are non-profit stations which utilize public donations for support. The public will be served by the expeditious assignment of the stations to a qualified licensee which can operate without the questions relating to qualifications which have been raised regarding Atkins.

5. Under the contract, the parties will be filing an assignment application with the Commission promptly. Appraisals of the property will be conducted as soon as possible. In any event, the contract limits the purchase price to an amount consistent with the Commission's distress sale policy.

6. Because a formal agreement has been reached which is in accord with the Commission's distress sale policy, a stay of this proceeding would be appropriate during the pendency of the con-

sideration of the distress sale. Neither the Commission nor the parties should be required to expend any time or resources in a proceeding which will be terminated and the designated issues mooted. Moreover, Atkins should be allowed to devote all of its time and attention to consummating this transaction without the distraction of an on-going proceeding. Commission policy contemplates that when a petition for distress sale is submitted to the Presiding Judge that the proceeding will be stayed. *Clarification of Distress Sale Policy, supra*, at 480, n. 2.

7. The criteria for issuance of a stay as enunciated in *Virginia Jobbers*, 259 F. 2d 921, are present in the instant case. The criteria are as follows: (1) has the petitioner made a strong showing that it is likely to prevail on the merits; (2) has the petitioner shown that without such relief it will be irreparably injured; (3) would the issuance of the stay substantially harm other parties interested in the proceeding; (4) would the stay further the public interest.

8. As demonstrated above, Atkins has met criteria 1 in that

purchase agreement has been executed which meets the terms of

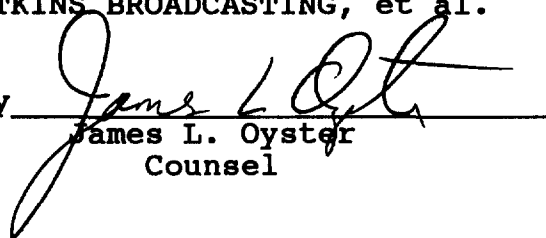
stay this proceeding, pending approval of the proposed distress sale by Atkins.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

ATKINS BROADCASTING, et al.

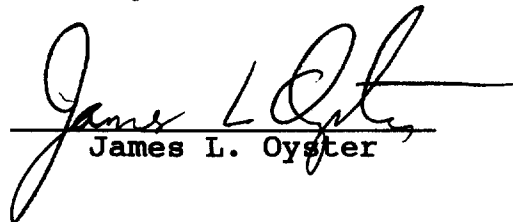
By


James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 30th day of March, 1993, to the following:

James Shook, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554


James L. Oyster

PURCHASE AGREEMENT

This Agreement made this 23rd day of March, 1993, by and between ATKINS BROADCASTING, CAPROCK EDUCATIONAL BROADCASTING FOUNDATION, SOUTHWEST EDUCATIONAL MEDIA FOUNDATION OF TEXAS, INC. AND SOUTHWEST EDUCATIONAL MEDIA FOUNDATION ("Seller"), and JOSE VEGA, on behalf of a corporation(s) to be formed ("Buyer").

WITNESSETH

WHEREAS, Seller is the licensee or permittee of the following broadcast stations: Atkins Broadcasting - KRGN(FM), Amarillo, TX; Caprock Educational Broadcasting Foundation - KLMN, Amarillo, TX; KAMY(FM), Lubbock, TX; Southwest Educational Media Foundation of Texas, Inc. - KENT AM/FM, Odessa, TX; and Southwest Educational Media Foundation - KOJO(FM), Lake Charles, LA.

WHEREAS, Seller desires to sell and Buyer desires to purchase said stations ("Stations"); and

WHEREAS, the parties hereto will be unable to consummate this Purchase Agreement until after the Federal Communications Commission has granted its consent to the terms and conditions hereof and the assignment of the licenses and/or permits contemplated herein;

NOW THEREFORE for and in consideration of the mutual and dependent covenants and agreements contained herein, the parties hereto mutually agree as follows:

1. After granting by the Federal Communications Commission ("FCC") consent to the assignment of the licenses and/or permits for the Stations and to the other arrangements, terms and conditions set forth herein, Buyer will purchase from Seller and

Seller will assign to Buyer on the closing date as hereinafter defined the FCC licenses and/or permits to operate the Stations. In addition, Seller will lease to Buyer all tangible and intangible assets used in connection therewith, said lease to be in the form set forth in Exhibit A hereto.

2. Upon FCC approval, Buyer will be assigned valid permits and/or licenses in accordance with the Communications Act of 1934, as amended, and the Commission's "distress sale" policy.

3. In consideration of the performance by Seller of the covenants and agreements contained herein, Buyer shall pay to Seller an amount equal to seventy-five percent (75%) of the "fair market value" of the Stations. The "fair market" value shall be determined as follows. Seller and Buyer shall each employ a broker to appraise the total value of the properties being assigned herein. The "fair market value" shall be the average of the two appraisals, provided that in no event shall the "fair market value" exceed the lowest appraisal by 5% or more. In the event of any dispute regarding the purchase price, the parties agree to submit the dispute to the Christian Conciliation Service for binding arbitration. The parties further agree that in no event shall the purchase price exceed the amount permitted by the FCC under its "distress sale" policy. The purchase price shall be paid as follows:

The purchase price shall be evidenced by a promissory note in the form attached hereto as Exhibit B. The promissory note will be secured by a stock pledge in the form attached hereto as Exhibit C.

4. Seller warrants and represents as follows:

(a) Seller will have the right, power and authority to sell the licenses and/or permits for the Stations pursuant to the Commission's "distress sale" policy.

(b) No litigation at law or in equity and no proceeding before any commission or other administrative or regulatory authority is pending or to the knowledge of Seller threatened against or affecting the Stations except for those matters previously disclosed and which have been raised in MM Docket No. 93-4;

(c) The execution and delivery of this agreement and the consummation of this transaction do not conflict with or result in a breach of any of the terms, provisions or conditions of any statute, regulation or court or administrative order or process, or any agreement or instrument to which Seller is a party or by which Seller is bound or constitute a default thereunder;

5. Buyer warrants and represents as follows:





(a) Buyer knows of no reason why Buyer should not be qualified before the Federal Communications Commission to carry out the terms of this agreement, including eligibility as a "minority" applicant under the Commission's "distress sale" policy (the corporation(s) shall be controlled by members of a minority group).

(b) The Buyer will form a non-profit corporation that will meet all of the legal requirements to be a Federal Communications Commission licensee of a Non-commercial Educational broadcast station in accordance with the Communications Act of 1934, as amended.

6. This entire agreement is subject to the approval of the Federal Communications Commission of the assignment contemplated hereby. Seller and Buyer shall promptly upon execution hereof make such applications and take such other steps as may be necessary to secure the written consent of the FCC to all actions contemplated herein. Each party agrees to cooperate with the other fully in securing the necessary approval of the FCC. Seller will bear the expenses of preparation of this agreement and prosecution of the applications for assignment of licenses and/or permits before the Federal Communications Commission.

7. It is agreed that Seller shall maintain and control the ownership of the license and/or permits for the Stations until the closing date following approval by the FCC of the assignment application contemplated herein. Seller will timely file with the FCC all documents required to effectuate this agreement.

8. In the event approval of the Federal Communications Commission to the arrangements, terms and conditions provided for in this agreement is not obtained within nine (9) months of the date of the filing of the applications therefor, Seller or Buyer may terminate this agreement by giving notice to the other in writing. If any application should be set for hearing, the parties agree irrespective of the nine (9) months cancellation clause that either party may at its election terminate this



the failure of the Federal Communications Commission to grant said applications does not arise through the violation or breach of one of the covenants of this agreement by either Buyer or Seller.

9. The assignment of licenses and/or permits as contemplated by this agreement shall be effected on the closing date. The closing date shall be no sooner than seven (7) days and not more than fourteen (14) days after FCC consent to all of the applications for assignment of licenses and/or permits have become final and no longer subject to administrative or court review. The closing shall take place in the offices of Seller. The date and place of closing may be changed by mutual consent of the parties.

10. All of the terms of this agreement are to be interpreted in accordance with the laws of Texas. In the event of any dispute among the parties relating to this agreement, the parties agree to submit to the Christian Conciliation Service in the Fort Worth metro area (the closest office of the Christian Conciliation Service to Fort Worth) or such other arbitration panel as the parties may select by mutual agreement. In the event the Christian Conciliation Service is no longer in existence and the parties are unable to mutually agree on an arbitration panel, the panel shall be chosen as follows: each party shall select a member of the bar in Texas as a panel member of their choice. The two selected shall then select a third panel member. The panel shall determine the rules of arbitration.

11. Any notices required or permitted to be given by Seller to Buyer shall be deemed sufficient if mailed by registered mail, return receipt requested, to:

T. Kent Atkins
2921 Brown Trail
Suite 140
Bedford, TX 76021

Any notice required or permitted to be given by Buyer to Seller shall be deemed sufficient if mailed by registered mail, return receipt requested, to:


Alex Ramirez
400 Leslie Drive, Apt 204
Hallendale, FL 33

The above addresses may be changed by written notice of such change to the last address designated.


12. This agreement shall inure to and be binding upon the successors, representatives, heirs and assigns of the respective parties hereto.

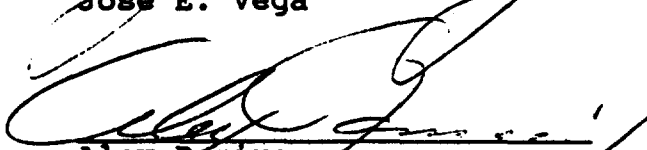
13. This agreement may be executed in any number of counterparts.

IN WITNESS WHEREOF, Seller has caused this agreement to be executed the date and year first above written.


T. Kent Atkins, personally,
and as President of Seller's
Corporations

IN WITNESS WHEREOF, Buyer has caused this agreement to be executed the date and year first above written.


Jose E. Vega


Alex Ramirez
on behalf a corporation(s) to be formed

LEASE

This lease made on the ____ day of ____, 1993, by and between ____, lessor, and ____, lessee, WITNESSETH:

That the lessor, for an in consideration of the rent, covenants, and agreements hereinafter mentioned, reserved and contained on the part and behalf of the lessee to be paid, kept, and performed, does by these presents grant, demise, and let unto the said lessee all the tangible and intangible assets used and useful in the operation of (radio station(s)) as listed in Attachment 1 hereto (said lease to include the sublease of such leases as listed in Attachment 1).

To have and to hold the said premises, with the appurtenances, unto the said lessee, from the ____ day of ____, 1993, for and during the full term of twenty years thence next ensuing, and fully to be complete and ended. This lease is made in connection with a certain Purchase Agreement pertaining to the sale of the radio stations, dated March 23, 1993. The purchase price therein is to be computed so as to include the value of the instant lease so that the purchase price will not exceed 75% of the fair market value of the stations, including the value of this lease. The Promissory Note evidencing the purchase price shall also cover rent under this lease. Any default in payment under the Promissory Note shall also constitute default in payment of the rent under this lease.

If the referenced Promissory Note, covering the rent hereunder, or any part thereof, shall be in arrears or unpaid on any day of payment whereon the same ought to be paid as set forth in the Promissory Note, then and from thenceforth it shall and may be lawful for the said lessor into and upon the said premises, and every part thereof, wholly to re-enter, and the same to have again, repossess, and enjoy as in his or their first and former estate, anything hereinbefore contained to the contrary thereof in anyway notwithstanding. And the said lessee does hereby covenant and agree to and with the said lessor that the said lessee shall and will promptly pay under the referenced Promissory Note in accordance with the terms thereof until said Promissory Note is paid in full. Lessee shall not assign this lease, nor permit any other persons to improve the demised premises, or make or suffer to be made any alteration therein but with the approbation of the lessor's consent in writing having been first obtained; and that on the last day of said term, or other sooner determination of the estate hereby granted, the said lessee shall and will, peaceably and quietly, leave, surrender, and yield up unto said lessor the said premises, in as good state and condition as the same are now or may be put into, reasonable use and wear thereof and damage by the elements excepted.

And the said lessor does hereby covenant and agree that the said lessee, paying the said rent and performing the covenants

and agreements aforesaid, shall and may at all times during the said term, peaceably and quietly have, hold, and enjoy the said premises, without any manner of let, suit, trouble, or hindrance of or from the said lessor, or any other person or persons whosoever.

It is further agreed that all provisions of this lease shall extend to and include the heirs and assigns of the lessor, and the executors, administrators, and assigns of the lessee.

In witness whereof the said parties have hereunto set their hands the day and year first above written.

[Signatures.]

NOTE

\$--,000.00

March____, 1993

FOR VALUE RECEIVED, the undersigned hereby promise to pay to the order of _____ ("Holder"), at 2921 Brown Trail, Suite 140, Bedford, TX 76021, or at such other place or to such other party, including a bank or other lending institution, as the Holder of this Note may from time to time designate in writing, the principal sum of _____ (\$__,000.00) together with interest at the rate of 8.5% on the balance of principal remaining unpaid from time to time as follows:

Payment of principal and interest hereunder shall commence on the 1st day of _____, 1993. Payments shall be made in equal monthly installments of principal and interest amortized over twenty (20) years. Payments are to be made on the first of each month. Any payment made after the 10th of any month shall be considered late. A late payment fee of 5% will be charged against any late payment.

This note may be assigned by Holder. This note may be assigned by Maker only upon written consent of Holder.

The term "Applicable Interest Rate" as used in this Note shall mean 8.5% per annum.

Upon default in payment of any sum when due under this Note, which default continues for three (3) months, the entire principal sum hereof and accrued but unpaid interest hereon may, at the sole option of the Holder hereof, be declared at once due and payable, time being of the essence of this obligation.

If this Note is placed in the hands of an attorney for collection, whether suit be brought or not, reasonable attorneys'

In the event any one or more of the provisions contained in this Note or any other document executed in connection herewith shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Note, or any other such document; and this Note and such other document shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein. Notwithstanding anything contained herein to the contrary, in the event any one or more of the provisions contained in this Note or any other document executed in connection herewith shall, for any reason, be held to be invalid, illegal, or unenforceable in any

hereby to be then immediately due and payable.

This Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change modification or discharge is sought.

IN WITNESS WHEREOF, Maker has duly executed this Note as of the day and year first above written.

By _____

MAKER

STOCK PLEDGE AGREEMENT

THIS AGREEMENT made this ____ day of March, 1993, by and between _____ (herein called "Pledgor"); and _____ (herein called "Pledgee");

WITNESSETH

WHEREAS, the Pledgor is duly indebted to Pledgee in the aggregate principal amount of _____ DOLLARS, evidenced by the promissory note of Pledgor, dated March ____, 1993 (the "Note"); and

WHEREAS, in order to induce Pledgee to enter into a certain Agreement dated March ____, 1993 (the "Agreement"), providing for the purchase by _____ (the "Licensee Corporation" - a corporation to be solely controlled by the Pledgor) of the FCC licenses and/or permits for radio stations KRGN, Amarillo, TX, KLMN, Amarillo, TX, KAMY, Lubbock, TX, KENT AM/FM, Odessa, TX, and KOJO, Lake Charles, LA, together with a lease of all equipment associated therewith, Pledgor has agreed to pledge 100% of its Stock (the "Stock") as security for the prompt payment of the Note in accordance with its terms:

NOW, THEREFORE, intending to be legally bound hereby, the parties agree as follows:

PLEDGE OF STOCK

Pledgor hereby pledges, grants a security interest in, and deposits with the Escrow Agent as agent for Pledgee, 100% of the stock owned by the Pledgor, certificates for which have been delivered to the Escrow Agent together with an assignment separate from certificate duly endorsed by Pledgor in Blank), and

hereby assigns, transfers and sets over to Pledgee all of the Pledgor's right, title and interest in and to such Stock (and in and to such certificates), to be held by the Escrow Agent upon the terms and conditions set forth in this Pledge Agreement as security and collateral (herein called the "collateral") for the due performance and compliance by Pledgor with all of the terms and provisions of this Pledge Agreement and for the payment, when and as due and payable, of any and all of Pledgor's liabilities under the Note.

VOTING

Unless an Event of Default (as hereinafter defined) shall have occurred and be continuing, Pledgor shall be entitled to vote its shares of the Stock. All such rights of Pledgor to vote shall cease in case of an Event of Default shall occur and be continuing, provided, however, that the Federal Communications Commission ("Commission"), if required by the Communications Act of 1934, as amended, and applicable rules and policies of the Commission, shall have first granted its consent to transfer of control of the Licensee Corporation. Notwithstanding any provision of this Pledge Agreement to the contrary, neither the Pledgee nor the Escrow Agent shall be entitled to vote the Stock, or exercise control of the Licensee Corporation, without the prior consent of the Commission, if required by the Communications Act of 1934, as amended, and applicable rules and policies of the Commission.

ADDITIONAL SHARES

Pledgor will not permit or approve the issuance of any additional shares of the Pledgor's Stock without the written

consent of Pledgee.

EVENTS OF DEFAULT

The following shall constitute an event of default: If
Pledgor fails to pay any sum when due or to perform any of its

irrevocably constitutes and appoints the Escrow Agent the proxy and attorney-in-fact of the Pledgor with full power of substitution to do so, such appointment being coupled with an interest);

(iv) to the extent permitted by law, sell, assign, and deliver or grant options to purchase, all or any part of the collateral at public or private sale, and on such terms as Pledgee may determine in its sole discretion, without notice or advertisement, and bid and become a purchaser at any such sale, and if notice to the Pledgor is required, written notice mailed to Pledgor (as provided herein) at least five (5) days prior to the date of sale of the Stock shall constitute reasonable notice. Pledgor hereby waives and releases to the fullest extent permitted by law any right or equity or redemption with respect to the Stock, whether before or after sale hereunder, and all rights, if any, of marshaling the Stock. At any such sale, unless prohibited by applicable law, Pledgee may bid for and purchase all or any part of the Stock so sold free and clear from any such right or equity of redemption.

TERMINATION AND RELEASE

Upon satisfaction of Pledgor's repayment obligations in all respects as specified in the Note, this Pledge Agreement shall terminate and the Escrow Agent and Pledgee, at the request and expense of the Pledgor, shall execute and deliver to the Pledgor a proper instrument or instruments acknowledging the satisfaction and termination of this Pledge Agreement, and Pledgee and Escrow Agent will duly assign, transfer and deliver to Pledgor such of the collateral as has not theretofore been sold or otherwise

with any moneys at the time held by the Escrow Agent as security hereunder.

DUTIES AND OBLIGATIONS OF THE ESCROW AGENT

Acceptance by the Escrow Agent of his duties as agent for Pledgee under this Pledge Agreement is subject to the following terms and conditions:

(a) The duties and obligations of the Escrow Agent shall be determined solely by the provisions of this Pledge Agreement, and he shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Pledge

connection herewith, except his own gross negligence or misconduct;

(e) The Escrow Agent, as Pledgee's agent, may seek advice of legal counsel in the event of any dispute or question as to his duties hereunder, and he shall incur no liability to Pledgee and shall be fully protected by Pledgee in respect of any action taken or suffered by him in good faith in accordance with opinion of counsel.

NOTICES

All notices hereunder shall be in writing and shall be delivered or mailed by certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

(a) If to Pledgor:

(b) If to Pledgee:

(c) If to Escrow Agent:

James L. Oyster
Rt. 1, Box 203A
Castleton, VA 22716

or at such other address as the parties may from time to time designate by written notice to the other parties.

MISCELLANEOUS

The terms of this Pledge Agreement shall inure to the bene-

ment shall be governed by the laws of the State of Texas. In the event any one or more of the provisions contained in this Pledge Agreement or Note shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Pledge Agreement or Note, but this Pledge Agreement and Note shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein.

IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be executed and delivered as of the date first above written.

PLEDGOR:

PLEDGE:

ESCROW AGENT

JAMES L. OYSTER